



Forestry Commission Wales policy position on development affecting woodlands

1. Purpose

This policy position provides the framework against which Forestry Commission Wales (FC Wales) will fulfil its various roles and responsibilities in respect of non-forestry development proposals that might affect woodlands both on and off the Welsh Assembly Government Woodland Estate. This framework has been developed using the relevant statutory and policy considerations.

2. Roles

1. Whilst overall responsibility for the exercise of all functions of the Forestry Commissioners in Wales rests with the Director of Forestry Commission Wales who is its Principal Accounting Officer and Executive Forestry Commissioner, the following four roles in respect of developments affecting woodland are clearly delegated to Senior Managers of FC Wales:
 - As Land Manager of the Welsh Assembly Government Woodland Estate under Section 3 of the Forestry Act (1967) and Section 23 of the Countryside Act (1968), under the FC Wales Head of Estate Management
 - As Regulator for the felling and replanting of woodland under Part 2 of the Forestry Act (1967), under the FC Wales Head of Grants and Regulation
 - As Statutory Consultee in accordance with Section 42 of the Planning Act (2008) and the 2009 Statutory Instrument (SI No. 2264). The SI advises that 'The Forestry Commission will be consulted on all proposed applications likely to affect the protection and expansion of forests and woodlands', under the FC Wales Head of Grants and Regulation
 - As Agent for the Welsh Assembly Government under Section 83 of the Government of Wales Act (2006) - where certain of the Minister's functions under Section 39 of the Forestry Act (1967) have been delegated to the Forestry Commissioners in relation to the acquisition and disposal of land and also the leasing for non-forestry developments such as wind-farms and minerals - under the FC Wales Head of Estate Management



Policy position on development affecting woodlands

2. The Head of Estate Management and Head of Grants and Regulation of Forestry Commission Wales will use the statutory and policy frameworks described below when exercising all four of these roles, consulting as required the FC Wales Head of Policy and Programme Development for who will provide advice on the interpretation of policy and the FC Wales Country Land Agent who will provide advice on the interpretation of statutory functions
3. The Director of FC Wales will also use this policy position in exercising their overall accountability for the functions of the Forestry Commission in Wales. If necessary, the Director will seek independent advice on any relevant case by convening a Regional Advisory Committee (RAC) as a sub-committee of the Woodland Strategy Advisory Panel (WSAP).

3. Statutory Framework

1. In summary these are: -
 - i. Section 1 of the Forestry Act 1967 as amended by the Wildlife and Countryside (Amendment) Act 1985 charges the Commissioners with the "...general duty of promoting the interests of forestry, the development of afforestation and the production and supply of timber and other forest products....". In doing so they must endeavour to achieve a reasonable balance between the above and "...the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest".

The Commissioners' general duty "includes that of promoting the establishment and maintenance....of adequate reserves of growing trees"*. **This general duty under Section 1 of the Forestry Act (1967) is the overarching statutory consideration for the Commissioners in relation to all four roles**

*Carbon flux management is now a relevant consideration in discharging that duty.

- ii. The Forestry Act 1967 (Part II) as amended by the Trees Act 1970 and the Forestry Acts 1979 and 1986 also provides the legislation governing the Forestry Commission's control of tree felling.
- iii. Section 3 of the Forestry Act 1967 sets out the powers of the Commissioners for the 'management of forestry land placed at their disposal by the Minister'. This will principally involve fulfilling the general duty under Section 1 in the management of the public forest estate.
- iv. Section 42 of the Planning Act 2008 requires that an applicant for a major infrastructure project must consult certain 'prescribed persons' about the proposed application. The list of prescribed persons is set out in SI 2009 No. 2264. The

Policy position on development affecting woodlands

Infrastructure Planning (Applications: Prescribed Forms and Procedure Regulations 2009). The regulations advise that 'The Forestry Commission will be consulted on all proposed applications likely to affect the protection and expansion of forests and woodlands'.

- iv. An agreement between the Welsh Assembly Government and the Forestry Commissioners, originally under S41 of the Government of Wales Act (1998) and now Section 83 of the Government of Wales Act (2006) authorises the Forestry Commissioners to exercise certain functions of the Welsh Assembly Government under S39 of the Forestry Act (1967) with regard to the disposal and acquisition of land and the development of the estate for wind farms and other purposes, subject to defined constraints and limits. The Commissioners have specifically been tasked by WAG to manage the legal agreements with developers entered into with the Welsh Ministers on the Assembly Government Woodland Estate. This is now known as the Forestry Commission Wales Wind Energy Programme.

4. Policy Framework

1. *Woodlands for Wales* is the Welsh Assembly Government's strategy for woodlands and trees and is the **overarching policy consideration for the Commissioners in relation to all four roles**. It sets out a number of outcomes sought from existing and new woodlands in Wales. These outcomes and the positions established in the strategy will inform how we exercise our relevant roles when considering developments that might affect woodlands and trees. Most relevant are:

- *Woodland cover in Wales increases to meet strategy priorities and to maintain the overall production potential from Welsh woodlands*
- *There is a strong presumption against the permanent removal of woodland except for the restoration of high priority open habitats and where this is necessary it is balanced by woodland creation at a national level; landscape improvement and habitat restoration are preferably achieved through modifying management systems rather than by removing woodland.*
- *Where there is a clear ecosystem service benefit, existing non-native woodlands are restored to priority open habitats*
- *When permanent removal of woodland is permitted for development, compensatory planting offsets the losses in public benefit**

*For the sake of clarity public benefits include the more obvious environmental and social non-market benefits, as well as benefits associated with woodland productivity and timber production.

Policy position on development affecting woodlands

- *Decisions about woodland creation and management take full account of all the ecosystem services the woodland could provide, not just the potential for timber production*
- *There is better protection for existing individual trees, particularly veteran trees, and more individual trees are planted in recognition of their contribution to ecosystem services and our quality of life*
- *Individual trees and woodlands are protected for their cultural significance, aesthetic quality and heritage value*

5. Implementing principles

1. We recognise the primacy of the planning system in determining any necessary removal of woodland or individual trees for development. However through the exercising of our various roles we will encourage all developments to consider the value of the affected woodland and trees in public benefit terms and promote the requirement for decisions to be informed by this analysis.
2. The statutory and policy frameworks above will determine the basis for any involvement by the Forestry Commissioners in developments in woodlands.
3. We will only comment on the spatial appropriateness of any developments if this has not been dealt with by wider government policy e.g. TAN8
4. If the development is supported through the planning system, we will be aiming to achieve planning gain and mitigation that helps to deliver against the relevant statutory and policy considerations, including specific proposals for compensatory planting to achieve equivalent or greater public benefit.

6. Specific considerations when considering wind farm developments affecting woodlands

1. In addition to the general principles above, the following will be the basis against which we fulfil our various roles in respect of wind farm developments affecting woodlands:

Firstly we will use the following distinctions and definitions when implementing this framework in respect of wind farm developments:

- ***Transitory woodland removal*** to allow development - We define this as the felling of trees necessary to facilitate development, including additional felling to windfarm boundaries, followed by replanting as soon as is practically possible. We will seek to minimise this and aim for rapid in-situ replanting after development has been completed. Assuming this is achieved as a planning requirement then compensatory planting will not be appropriate.
 - ***Temporary woodland removal*** to accommodate development infrastructure - We define this as the conversion of woodland to another land use for the life of the development. After the development has been removed then a woodland should be replanted as soon as is practically possible. We will seek to ensure that any woodland removed to accommodate temporary wind farm developments is minimised and replaced in due course, assuming that the sites are not in scope for permanent deforestation to achieve policy supported habitat restoration. Compensatory planting will be appropriate to mitigate even this temporary loss of woodland.
 - ***Permanent woodland removal*** for policy supported habitat restoration - We define this as permanent woodland removal for the restoration of open habitat. We will support this approach assuming it is coherent with a wider package of mitigation and planning gain proposals that delivers a suite of outcomes relevant to *Woodlands for Wales*, including the requirement to increase woodland cover in Wales.
2. We already aim to implement the full public benefit policy of *Woodlands for Wales* through our management of the Assembly Government Woodland Estate, irrespective of planning mitigation or planning gains. Therefore genuine additionality from developers' proposals will only be possible either by 'speeding up' delivery or by helping to deliver *Woodlands for Wales* objectives beyond the estate.
3. Public benefits from the management of the estate are currently funded through a combination of receipts generated from the management of the estate and grant-in-

Policy position on development affecting woodlands

aid from the WAG. Therefore like any publicly funded organisation, we agree an annual budget with the Assembly Government and cannot commit programme funds beyond this arrangement. However notwithstanding this consideration, we will ensure that any mitigation or planning gain proposals are additional to our wider public benefit programmes. *

** The interaction between annual budgeted programmes and mitigation or planning gain funded programmes is likely to be complex over the lifetime of a development due to a) variability in publicly funded programmes and b) the reality of operational programme delivery where logistics and spatial considerations frame the programme rather than the precise funding source.*

We will support the most appropriate mechanism for ensuring the long-term delivery of any mitigation and planning gain plans.

Forestry Commission Wales
July 2010